IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Writ Petition No.1182 of 2007

Amit H. Jhaveri — Petitioner

Vs.

CBI, ACB,
Tanna House, Mumbai & anr. — Respondents

Mr.A.H.Jhaveri, petitioner in person.

Mr.J.C.Satpute for CBI - Resp.no.1.

Mr.Y.M.Nakhawa, APP for State - Resp.no.2.

CORAM: B.H.MARLAPALLE, J.

July 13, 2007.

P.C.

1. Heard the petitioner in person who is accused no.3 in CBI Special Case No.45 and CBI Special Case No.46 of 1996. Mr.Satpute appears for CBI and Mr. Nakhawa, APP appears for State.

2. Rule. Respondents waive service. By consent, the Rule is made returnable forthwith.

3. The petitioner is aggrieved by the order passed by the learned Judge of the Special Court on 20/6/2007 thereby imposing some additional conditions and restricting proposed overseas travel to only five countries as compared to the earlier order passed by the very same Court on 13/4/2007 and that too in the absence of any written objection or application for modification of such conditions filed by the CBI.

4. Though the charge-sheets in both the cases have been filed way back in 1996, the trial of the Special Cases for offences punishable under Sections 120-B read with Sections 420, 409, 468, 471 and 477-A of IPC and Sections 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 has not progressed much and mainly on account of the stay granted by this Court at the instance of the accused no.2 - Shri R.S. Joshi, who was one of the Chief Managers of Bank of Baroda, Walkeshwar Branch at the relevant time. I am informed that the stay has been vacated by this Court in the last month and, therefore, there is no reason why the trial should not proceed expeditiously.

5. Be that as it may, the petitioner is a self-employed professional and during the last 12 years or so he claims to have travelled on 19 occasions overseas and with the permission of the Special Court for his business purposes. He submitted an application for permission to travel abroad which came to be registered as Misc. Application No.167 of 2007. The same was allowed in terms of the following order :

> "1. A-3 / Amit Zaveri is allowed to leave India till 7/6/07 on his depositing additional cash security of Rs. 50,000/- which is a condition precedent.
>
> 2. CBI ACB to return passport of A-3 within 1 week from today.
>
> 3. While out of India, A-3 shall inform CBI ACB Mumbai regarding his whereabouts, telephone / Fax No. for communication
>
> 4. A-3 shall remain present before the Court on 8/6/07 in pending case 45/96.
>
> . With these directions, present MA No.167/07 stands disposed of."

. The case was adjourned to 8/6/2007. It is apparent from this order that the present petitioner was allowed to travel to any foreign country and his travel was not limited to few countries. The petitioner has shown certified copies of the record

which indicates that on 13/4/2007 he applied for certified copy of the order quoted hereinabove and surprisingly the certified true copy of the said order was made available to him on 8/6/2007 on which date the petitioner was directed to remain present before the Special Court in Special Case No.45 of 1996. As per the petitioner, on account of non-supply of the certified true copy of the order dated 13/4/2007, he could not undertake the proposed foreign journey and solely on account of the reasons attributable to the Special Court Registry. On 8/6/2007 he, therefore, appeared before the Court and submitted a fresh application i.e. Misc. Application No.257 of 2007 for extension of the period mentioned in the order dated 13/4/2007 for his foreign travel. As per the petitioner the CBI did not file any reply to this application and the Court passed the following order on 20/6/2007 :

> "a. A-3 is allowed to leave India to visit the countries Singapore, Indonesia, Malaysia, Korea and Sri Lanka till the end of July 2007 on the condition that he shall deposit additional cash security of Rs.1 lakh with the office of the Court which is a condition precedent and on fulfilling such condition CBI to return his passport within 2 days.
>
> b. While out of India, A-3 shall inform CBI ACB Mumbai regarding his whereabouts,

telephone / fax No. well in advance.

c. A-3 shall remain personally present before this Court on every adjourned date including the immediate next date i.e. 10/7/07.

. With these directions, the present MA is disposed of."

6. I have heard Mr.Satpute, the learned Standing Counsel for the CBI. He has placed before me copies of the charge-sheet in both the pending cases and as per him, the trial of the case in respect of such serious charges has not progressed on account of the dilatory tactics played by the petitioner or the other accused. The petitioner has stoutly denied this allegation and has pointed out that the trial of the cases was stayed by this Court in a petition filed by accused no.2 - Shri Joshi.

7. The Special Court is certainly not prevented from imposing new conditions when the application for extension of the earlier order was made, provided the CBI submitted an application impressing upon the Court a necessity to do so and/or even in the absence of such an application the Court gives reasons for imposing such conditions. None of this is seen in the impugned order. It was necessary for the Court to give reasons why the petitioner’s travel abroad

was limited only to five countries as against the earlier order which did not put any such limitations and as noted earlier, the order dated 13/4/2007 could not be acted upon because the certified true copy of the same was not made available to the petitioner in time and when it was made available the period therein had already expired.

8. I am, therefore, satisfied that the order impugned is unsustainable and the period of travel as set out in the earlier order dated 13/4/2007 is required to be extended.

9. Hence the petition is partly allowed and the impugned order dated 20/6/2007 passed in Misc. Application No.257 of 2007 is hereby quashed and set aside. The order dated 13/4/2007 passed in Misc. Application No.167 of 2007 is hereby extended upto 31st August 2007 subject to the petitioner remaining present before the trial Court on 24th July 2007, which is the next date fixed before the said Court.

10. The trial of both the cases is hereby expedited and it is made clear that on the dates fixed by the trial Court upto 31st August 2007 and

thereafter the petitioner must remain present before the said Court.

11. Rule is made absolute accordingly.

12. Certified true copy of this order be issued on priority basis.

13. Writ to go to the trial Court forthwith.

(B.H.MARL